United Nations A/56/310

General Assembly

Distr.: General
20 August 2001

Original: English

Fifty-sixth session
Item 131 (b) of the provisional agenda*
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of migrants

Report of the Secretary-General**

1. At its fifty-fifth session, in resolution 55/92 of 4 December 2000, the General Assembly welcomed the renewed commitment made in the United Nations Millennium Declaration to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies.

2. The General Assembly reaffirmed the responsibility of Governments to safeguard and protect the rights of migrants against illegal or violent acts, in particular acts of racial discrimination and crimes perpetrated with racist or xenophobic motivation by individuals or groups, and urged them to reinforce measures in that regard; urged all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants, including by individuals or groups; and called upon all States to protect the human rights of migrant children, in particular unaccompanied migrant children.

3. The Secretary-General was requested to submit a report to the General Assembly at its fifty-sixth session on the implementation of resolution 55/92 under the sub-item entitled "Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms".

4. Pursuant to that resolution, the Office of the United Nations High Commissioner for Human Rights transmitted, on 15 June 2001, a note verbale to Governments on behalf of the Secretary-General, drawing their attention, in particular, to paragraphs 2, 4 to 9 and 11 of resolution 55/92.

5. On 11 July 2001, the Government of **Cuba** transmitted a reply expressing its concern at the violations of the human rights of migrants as well as at the manifestations of racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants. Specifically, the Government noted that it considered it necessary to address the structural causes of economic migration, stating that while there was freedom of mobility for goods and services, immigration policies were ever more restrictive and discriminatory. In its reply, the Government of Cuba also stated that Cuban authorities made great efforts to prevent illegal migration from

* A/56/150.

** In accordance with General Assembly resolution 55/222, section III, paragraph 10, the present report is being submitted on 20 August 2001 so as to include as much updated information as possible.

01-51740 (E) 180901

Cuba to the United States of America, and it referred to the bilateral agreements which were signed by both countries in 1981 and 1984.

6. On 13 July 2001, the Government of **Thailand** provided a reply stating that Thailand fully protected the human rights of legal migrants according to Thai national law and its Constitution (B.E. 2542-1997). The Government also stated that it worked closely with the International Organization for Migration (IOM) and non-governmental organizations to assist and protect migrant populations in irregular situations. Furthermore, it gave the assurance that in some cases illegal migrants were authorized to work in restricted occupations until they were repatriated, receiving equal treatment and full protection of their rights, including social security and other provisions under the Labour Protection Act B.E. 2541. The Government further asserted that all migrants, regardless of their legal status, received medical treatment upon request. On the issue of trafficking, the Government detailed measures taken to combat human trafficking, particularly of children and women, including new and improved legislation as well as regional and bilateral initiatives and the creation of the National Secretariat on Trafficking in Women and Children in the Mekong Subregion. Finally, the Government of Thailand reported that it had signed the United Nations Convention against Transnational Organized Crime and was in the process of signing both its additional protocols.

7. On 30 July 2001, the Government of **Mauritius** transmitted information on its implementation of General Assembly resolution 55/92. It stated that Mauritius had ratified the International Labour Organization (ILO) Convention concerning Migration for Employment (Revised), 1949 (No. 97). It accordingly ensured that, with regard to fundamental principles and rights at work, migrant workers did not receive treatment less favourable than that enjoyed by Mauritian nationals in respect of remuneration, hours of work, overtime arrangements, holidays with pay, etc. They were also free to join trade unions and enjoy the benefits of collective bargaining.

8. On 31 July 2001, the Government of **Ecuador** reported that, concerning paragraphs 2 and 4 of resolution 55/92, the legal protection of migrants was guaranteed under article 13 of Ecuador's current Constitution and the Aliens Act. In addition, article 23 of the Constitution of Ecuador recognized the principles of non-discrimination and equality before the law. With regard to the increasing number of Ecuadorians who were becoming migrants, it was reported that a wide range of measures had been taken by the Government of Ecuador in order to promote and protect the rights of Ecuadorian migrants and their families. Thus, the Government stated that national consultations had been scheduled in order to adopt a national plan for Ecuadorian migrants. Through that mechanism the State and the civil society agreed to launch a process to achieve the ratification of a number of international instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Government also reported that it was providing specialized training for civil servants who were dealing with migrants in order to make known the national legal norms that could be applied to that group. Moreover, the Government of Ecuador reiterated its desire to cooperate fully with the Special Rapporteur of the Commission on Human Rights on the human rights of migrants in the performance of her tasks and duties and has invited the Special Rapporteur to visit the country between 5 and 15 November 2001.

9. By a letter dated 2 August 2001, the Government of **Lebanon** replied that the Lebanese justice system had not conducted any inquiries concerning attacks against migrants.

10. On 2 August 2001, the Government of **Guatemala** transmitted a detailed report on the protection of migrants in Guatemala, which includes information on the characteristics of migrant populations in Guatemala, legislation and administrative measures which have been adopted, as well as specific commitments made in regard to this question, within the framework of the Guatemalan Peace Accords. The Government also reported that it was currently studying a proposal that IOM had made to it for the implementation of a series of projects and programmes which would provide support to Guatemalan residents abroad, to repatriated nationals, as well as to nationals of other countries, and address other general social problems linked to the migratory phenomenon. In addition, the Government reported on a number of measures it had taken to guarantee the specialized training of immigration and law enforcement officials, which included the creation of a specialized training unit within the structure of the national authority for migration and courses on

immigration issues in the new civilian police academy. Along with 10 other countries from the region, Guatemala was also a member of the Regional Conference on Migration. Guatemala has signed, although not ratified, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

11. On 9 August 2001, the Government of **Spain** provided a reply concerning the protection of migrants. It stated that the Spanish Criminal Code and the Ley Orgánica 4/2000 (revised by the Ley Orgánica 8/2000) included anti-discriminatory norms which protected migrant populations. In addition, under the latter measures had been introduced in order to combat the trafficking and exploitation of migrants. The Government also stated that the aim of article 35 of the Ley Orgánica 4/2000 was to protect the human rights of migrant children. At the international level, the Government of Spain had signed the United Nations Convention against Transnational Organized Crime and its two accompanying protocols.

12. Information provided by the Governments of Bahrain, Belarus and Qatar has been transmitted for translation and will be included in the next report of the Secretary-General on the protection of migrants.

13. In response to the Secretary-General's request for Governments to report on the implementation of General Assembly resolution 54/166 entitled "Protection of migrants", last year the Office of the United Nations High Commissioner for Human Rights also transmitted a note verbale to Governments requesting them to report on the status of implementation of the resolution.

14. On 3 July 2001, the Government of **Kuwait** stated, in connection with General Assembly resolution 54/166, that the Kuwaiti Constitution and labour legislation guaranteed protection and assistance to immigrant workers, safeguarding their employment rights without any form of discrimination. Furthermore, it was reported that the relevant authorities were revising labour legislation governing the private sector with a view to producing model legislation conducive to the implementation of a policy of economic and social development. The new bill was viewed as an important step forward, since it took into account to a large extent the observations and recommendations made by the Committee of Experts on the Implementation of International Labour Treaties and Recommendations. Moreover, with a view to ensuring greater protection and assistance for workers, the Government of Kuwait indicated that an Advisory Committee on all matters relating to employment had been set up pursuant to Ministerial Decision No. 151 of 24 August 1999. It also noted that immigrant labour in the State of Kuwait comprised over 130 nationalities and that the total number of male and female employees came to roughly 640,931 on 6 June 2000.

15. The Government of **Azerbaijan** responded with two communications dated 28 July and 23 August 2000 on the issue of protection of migrants. It stated that article 69 of the Constitution defined the rights of aliens and stateless persons residing in Azerbaijan. Under that article, aliens and stateless persons present in the Republic of Azerbaijan had the same rights and duties as Azerbaijani citizens, unless specified otherwise by law or an international treaty to which Azerbaijan was a signatory. According to the 1991 Employment Act, the aim of State employment policy was to ensure that all citizens residing in Azerbaijan, irrespective of their nationality, sex, age, social status, political views or attitude to religion, were able to exercise the right to work and the right to free choice of employment. It was further stated that since 1997 the Government of Azerbaijan, in cooperation with the International Organization for Migration (IOM), had been implementing a programme for the harmonized management of migration. Under that programme, a draft blueprint for a State migration policy had been prepared and was now being considered by the Government. A legislative and organizational framework to regulate migratory processes was currently being developed. The Economic Migration Act, adopted in October 1999, outlined the legal, economic and social principles of economic migration into the Republic of Azerbaijan and regulated the relations arising from economic migration. Article 10 of that Act provided for the social welfare of economic migrants and members of their families. Such persons had the same entitlements to social welfare as those which the law conferred on working Azerbaijani citizens and members of their families (except for pension rights). Pension arrangements for economic migrants and members of their families were dealt with under Azerbaijan's bilateral and multilateral treaties. The law prohibits restrictions on the reunification of economic migrants with their families. As well as developing a legislative framework, the Government of Azerbaijan has recently been deepening bilateral

cooperation on migration issues with Kazakhstan, Moldova, Georgia, Turkey, the Russian Federation and Saudi Arabia. According to the information sent, one of the most pressing problems confronting Azerbaijan was the continued presence in the country of large numbers of forced migrants.

16. On 31 July 2000, the Government of **Denmark** reported that immigrants and refugees generally enjoyed legal equality with Danish citizens and, like all citizens, they were protected by law against discrimination on the basis of race, colour, religious belief, political observation, sexual orientation or national, social or ethnic origin. The Government stated that General Assembly resolution 54/166 did not in itself lead to any specific changes of Danish immigration policies. However, owing to the importance of the effective protection of the human rights of immigrants and refugees, the Government did set up a Committee of Ministers who launched an overall plan of action with 78 initiatives for the improved integration of those groups to society. Finally, the Government of Denmark gave information on the legal measures which existed to combat trafficking and smuggling on its territory.

17. On 2 August 2000, the Government of **Georgia** responded that the second chapter of the Constitution of Georgia referred to fundamental human rights and freedoms and established guarantees for the exercise of those rights by all individuals, including migrants who were within the jurisdiction of Georgia. The Government additionally provided a list of Acts approved by the Parliament of Georgia concerning migration issues and reported that a special State commission was created in order to ameliorate coordination on issues concerning migrants between different government bodies. In regard to cooperation with organizations, the Government noted its tight links with UNHCR and IOM, as well as the Council of Europe. Furthermore, the Government of Georgia specified that a permanent legal and institutional reform in connection with migration issues was in progress and that preference was given to a liberal regime for migrants.

18. On 15 August 2000, the Government of **Colombia** informed the Secretary-General on issues relating to the protection of migrants. It stated, inter alia, that the Colombian Constitution guaranteed the principle of non-discrimination and that Colombian legislation reflected the decisions and recommendations made by the United Nations, and particularly the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (General Assembly resolution 40/144, annex) and Commission on Human Rights resolution 1999/44 on the human rights of migrants. Colombia fulfils its obligation under the Vienna Convention on Consular Relations to guarantee consular assistance for those migrants in its territory who request it. Moreover, all aliens have the right to be assisted by an interpreter if they are before a Colombian court and are not fluent in Spanish. It was also reported that the new Colombian Criminal Code has introduced new developments such as the punishment of human trafficking.

19. On 22 August 2000, the Government of **Slovakia** provided information about the procedures which have been implemented to process asylum claims and repatriate rejected asylum seekers, with the respective collaboration of UNHCR and IOM.

20. On 14 September 2000, the Government of **Venezuela** sent a communication enumerating the existing legal norms which protect migrants within its territory. Among the most significant aspects, the Government emphasized the importance given to the effective implementation of international accords on the matter, the fact that a lack of internal legislation should not hinder the protection of internationally recognized human rights, the provision of non-discrimination and equality of all persons, and the adoption of sanctions against the abuse and ill-treatment of certain vulnerable groups. The Government of Venezuela also reported on its regional agreements, particularly with regard to the Andean Community of Nations and how they related to migratory issues. Finally, the Government of Venezuela supplied information regarding a report which was submitted to contribute to the work of the Special Rapporteur on migrant workers of the Inter-American Commission on Human Rights, in which Venezuela indicated, inter alia, that the National Commission on Migration was created to design and formulate a national policy on migration.

21. The Government of **Cyprus** responded, on 26 September 2000, that the provisions of its labour law and other relevant legislation applied equally to nationals and non-nationals. In that connection, the Cypriot Government stated that it was established that remuneration and other benefits for foreign workers

would be those defined for Cypriot workers by the relevant collective agreements, that the transportation costs for foreign workers from their countries of origin were borne exclusively by the employer and that special health insurance covered the foreign worker at least to the same extent as that provided by the collective agreements for Cypriot workers. Moreover, the Government added that the existing policy provided that complaints by foreign workers on labour matters were to be examined by its District Labour Offices. The Government of Cyprus pointed out that Cypriot legislation did not discriminate between Cypriot and foreign workers regarding social security rights and obligations. Finally, foreign workers and their families who resided legally or worked regularly in Cyprus were entitled to welfare benefits and services under the same conditions as nationals.

22. On 15 December 2000, the Government of **Madagascar** stated that the Constitution of Madagascar and law No. 62-006 of 2 June 1962, which regulates migratory control and management, were proof of Madagascar's policy of tolerance towards migrants. The Government of Madagascar reported that the only problems which existed with regard to its migration policies were those related to complaints owing to delays in issuing visas for foreigners, the fact that after legislative reform foreigners were required to associate themselves to a national in order to purchase property in the country and the fact that permanent residents must wait five years before they could apply for Malagasy nationality. Furthermore, it was stated that there was no racism or violence of any kind against migrants in Madagascar.

23. Attention should be drawn to the status of ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly in resolution 45/158 of 18 December 1990. Until 15 August 2001 the following 16 countries had ratified the Convention: Azerbaijan, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Egypt, Ghana, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Uganda and Uruguay. The Secretary-General commends these ratifications and welcomes the fact that 10 more States have signed that international instrument. The Secretary-General urges all Member States to take all the necessary steps in order to ratify the Convention promptly and to bring it into force so as to ensure respect for the human rights of all migrant workers and their families.

24. The General Assembly, in its resolution 55/92, welcomed the recommendations of the Special Rapporteur on the human rights of migrants that close links be established between her work and that of the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The Special Rapporteur participated in the first and second preparatory committees for the World Conference, submitting documents which aimed to contribute to the identification of the main issues that the Conference should address in regard to migrants. The Special Rapporteur also participated in the expert seminars held in Addis Ababa and Santiago de Chile, in September and October 2000, respectively, as well as the regional meetings of Dakar and Tehran in January and February 2001. The Special Rapporteur will make her final recommendations to the World Conference during her participation in Durban and has stated that she will remain committed to the follow-up of the Conference. At the fifty-seventh session of the Commission on Human Rights the Special Rapporteur submitted her second report (E/CN.4/2001/83), in which she focused on the legal framework of her mandate as well as on specific matters requiring her attention, such as irregular migration and the situation of migrant women and unaccompanied children, among others. Following the adoption of Commission on Human Rights resolutions 2000/48 and 2001/52, in which the Special Rapporteur was requested to include in her work schedule a programme of visits, she visited Canada from 17 to 30 September 2000 and presented her findings in an addendum to her report to the Commission at its fifty-seventh session (E/CN.4/2001/83/Add.1). In the context of her mandate, the Special Rapporteur will carry out an official mission to Mexico and the Mexican-United States of America border from 18 September to 5 October 2001. She will also carry out a fact-finding mission to Ecuador from 5 to 15 November, pursuant to the invitation extended to her by the Government of Ecuador. Furthermore, the Special Rapporteur has accepted the invitation of the Government of the Philippines and is expected to visit the Philippines early in 2002. Finally, the Special Rapporteur has continued to monitor the regional initiatives which have developed in connection with migratory issues, particularly in Europe and the Americas, and has

participated in several regional and international forums around the world, which she will report on to the Commission on Human Rights at its fifty-eighth session next year.